

No. 18-\_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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IRMA OVALLES,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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**APPLICATION FOR AN EXTENSION OF TIME TO  
FILE PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE ELEVENTH CIRCUIT**

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TO THE HONORABLE CLARENCE THOMAS,  
Associate Justice of the Supreme Court of the United  
States, and Circuit Justice for the United States Court of  
Appeals for the Eleventh Circuit:

The Petitioner, IRMA OVALLES, through undersigned  
counsel and pursuant to 28 U.S.C. § 2101 and Supreme  
Court Rules 13.5 and 30.2, respectfully requests an  
extension of time of sixty (60) days to file her Petition for  
Writ of Certiorari in this Court. Ms. Ovalles will seek

review of the decisions of the United States Court of Appeals for the Eleventh Circuit entered on October 4, 2018, (the en banc opinion) and October 9, 2018 (the panel's post-remand opinion). *See* Attachments A, B. Ms. Ovalles invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1254. Her time to file a Petition for Writ of Certiorari will expire on January 7, 2019. Ms. Ovalles makes this application for an extension more than ten (10) days before the petition's original due date. This is her first request for an extension of time. In support of the application, Ms. Ovalles offers the following:

Petitioner's case involves an important constitutional question: Does the residual clause in 18 U.S.C. § 924(c) survive this Court's decisions in *Johnson v. United States*, 135 S. Ct. 2551 (2015), and *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018)? The en banc Eleventh Circuit Court of Appeals answered the question in the negative and, in doing so, sharply shifted away from the traditional categorical approach to an invented "conduct based" approach. The en banc opinion of the sharply divided court (the vote tally was 8-4) ran more than 150 pages and included a majority opinion, a concurring opinion, and two dissenting opinions.

The circuits are deeply divided on this question. At least four courts of appeals have held since *Dimaya* that § 924(c)'s residual is unconstitutional; three or more, including the Eleventh Circuit, have salvaged the statute. This Court has pending before it now a collection of petitions for writ of certiorari on this topic, including at least two filed by the Solicitor General from opinions of the Fifth and Tenth Circuits. *See, e.g., United States v. Davis*, No. 18-431 (filed on October 3, 2018); *United States v.*

*Salas*, No. 18-428 (same). This Court will soon decide whether or not to grant one or more petitions on this divisive question.

Meanwhile, Ms. Ovalles's own petition for writ of certiorari will be due on January 7, 2019. Counsel for Ms. Ovalles asks the Court to extend that deadline by 60 days for several reasons. First, counsel requires additional time to consult with experienced Supreme Court advocates as he prepares the petition. Second, counsel will be on vacation (and unable to work on the petition) for ten days at the end of December and beginning of January. Finally, the Court will likely decide whether to grant or deny the pending petitions by early March, a circumstance that may affect Ms. Ovalles's own petition, for better or worse.

### CONCLUSION

Ms. Ovalles asks this Court to grant this application for an extension of time to file the Petition for Writ of Certiorari by sixty (60) days, until and including March 8, 2019.

Respectfully Submitted,

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